IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos: 3571, 3573 of 2004 and C.C.No.826 of 2004

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WRIT PETITION Nos: 3571 of 2004

Between:

D.Narayana, S/o. Veerappa,
R/o.Sardarnagar, Shabad Mandal, R.R.District.

..... PETITIONER

AND

1 The District Educational Officer, Nampally Zone, Hyderabad.
2 The Correspondent, Nish Shulk Prabhat High School, Khairatabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of WRIT OF MANDAMUS declaring the Proc.No.746 dated 16-8-2000 issued by the second respondent as illegal, arbitrary and unjust and set aside the same and consequently, direct the respondents to consider the case of the petitioner for reinstatement as drawing teacher with all consequential benefits.

WRIT PETITION NO : 3573 of 2004

Between:

D.Narayana, s/o Veerappa,
R/o Sardarnagar, Shabad Mandal, R.R.District.

..... PETITIONER

AND

1 The District Educational Officer, Nampally Zone, Hyderabad.
2 The Correspondent, Nish Shulk Prabhat High School,
Khairatabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of mandamus declaring the action of the second respondent in not taking any action pursuant to the proceedings in Rc.No.201/19044/C12/16years/99 dated 7/9/1999 issued by the 1st respondent for the purpose of granting of 16 years scale to the petitioner with effect from 19/6/1994 as illegal, arbitrary and contrary rules and consequently, direct the second respondent to consider the case of the petitioner for grant of 16 years scale with effect from 19/6/1994 with all the consequential benefits like revision of pay scale and arrears thereof.

CONTEMPT CASE NO : 826 of 2004

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 18/03/2004 in WPMP No.4701 of 2004 in WP No. 3571 of 2004.)

Between:

D.Narayana, s/o Veerappa,
R/o Sardarnagar, Shabad Mandal, R.R.District.

..... PETITIONER

AND

1 The District Educational Officer, Nampally Zone, Hyderabad.
2 Mr. K. Gopalakrishna Murthy, Correspondent, Nish Shulk Prabhat High School, Khairatabad, Hyderabad.

.....RESPONDENTS

Counsel for the Petitioner: MR.Y.S.VENKATA RAO

Counsel for the Respondent No.1: The G.P. for School Education

Counsel for the Respondent No.2: MR.B.CHANDRASEN REDDY

The Court made the following Common Order:

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COMMON ORDER:

Heard Sri P. Venugopal, learned senior counsel appearing for the petitioner in all these three cases and the learned Government Pleader for School Education appearing on behalf of the first respondent and Sri. B. Chandrasen Reddy, learned counsel appearing for the second respondent-School.

The facts in brief are that the petitioner, who has been working as Drawing teacher, in the second respondent–School since 19.06.1978, states that he has been discharging the duties to the utmost satisfaction of his superiors without any complaints. As per the letter filed on 20.06.2000, the petitioner sought voluntary retirement. Subsequently, on 30.10.2000 itself he has filed another application for withdrawing the said letter dated 20.06.2000. However, the grievance of the petitioner is that without taking into consideration of the withdrawal application filed by him on 30.10.2000, the impugned order has been passed by the second respondent herein, on 16.08.2000, accepting the voluntary retirement of the petitioner with effect from 01.11.2000. The petitioner states that the said impugned order is received by him on 03.01.2001 and whereas he has been working and discharging his duties till 02.01.2001. Therefore, either way, the question of accepting the application filed by him on 20.06.2000, is wholly unsustainable. Hence, these petitions.

In the counter-affidavit filed by the respondents herein it is stated that the application of the petitioner seeking voluntary retirement has been duly accepted in the meeting held by the second respondent on 07.07.2000 and it was ultimately turned into the impugned order dated 16.08.2000. It is further stated that the petitioner is also drawing the pension with effect from November, 2000, apart from the receipt of other amounts, to which he is entitled to towards commutation, gratuity and monthly allowances etc. These aspects have been suppressed by the petitioner in the writ affidavit and therefore, the present writ petitions, which have been filed after a long delay of 40 months, i.e., on 23.02.2004, are wholly suffer from serious latches and are liable to be dismissed.

The learned counsel appearing for the petitioner mainly stresses on the application

dated 30.10.2000 to say that the said application has remained unconsidered and therefore, the question of accepting the request of the petitioner made in application dated 20.06.2000 is not valid and further, no orders have been passed on the latter application filed by him. Therefore, the petitioner having worked on 02.01.2001 could not be made to retire under voluntary retirement with effect from 01.11.2000. Hence, the very impugned order is wholly vitiated.

Both the learned counsel appearing for the contesting respondents herein submitted that having regard to the acceptance of the petitioner's request for voluntary retirement, the impugned order has been passed and the same has been accepted by the petitioner and he is receiving the monthly pension along with the other benefits. The petitioner is estopped from making any challenge to call back the withdrawal application alleged to have been filed by him on 30.10.2000. Further, it is also their case that the present writ petition has been filed after 40 months of the orders passed accepting the voluntary retirement, also suffers from serious latches.

Considering the submissions made on either side, and also on perusal of the material, the question that falls for consideration is whether the impugned action of the respondents herein in accepting the petitioner's request for voluntary retirement in terms of the application filed by him on 20.06.2000 is sustainable in the teeth of the latter application alleged to have been filed for withdrawal on 30.10.2000. There is no dispute with the basic facts as stated above. The petitioner is working as a Drawing Teacher and it is only in pursuance of the application filed by him on 20.06.2000, the impugned order came to be passed on 16.08.2000. Though, it was served on the petitioner on 03.01.2001, it is the case of the petitioner that in fact he has been working till 2.1.2001 and this fact was not disputed by both the respondents herein. The impugned order says that the acceptance of voluntary retirement is w.e.f 01.11.2000, there is no serious dispute and there are no specific averments in rebuttal on behalf of the petitioner in the guise of the allegation made by both the respondents herein to the effect that the petitioner is in receipt of monthly pension from November, 2001 apart from the other amounts towards commutation, gratuity and monthly allowances etc. Thus, it is quite clear case, which amply shows that the petitioner, having accepted the monthly pension, now seeks to assail the very same action, after a long lapse of 40 months, seeks to call back the said application filed on 30.10.2000. During the course of arguments, on a query being made, neither of the counsel is able to say as to the ultimate action taken or any

orders passed in pursuance of the application filed by the petitioner on 30.10.2000. However, the fact remains that such an application remained unconsidered and no orders have been passed. However, the contra facts reveal that the petitioner accepted the pension benefits and after the lapse of 40 months he approached this Court under Article 226 of the Constitution of India, would itself is a serious negative factor to seek any indulgence from this Court.

In view of the same, I do not find any justification to interfere in the matter. In the circumstances, it has to be held that no fault as such in accepting the petitioner's request for voluntary retirement and the same is perfectly valid.

In C.C.No.826 of 2004, the petitioner sought for taking action against both the respondents herein for violation of the interim orders passed by this Court in W.P.M.P.No.4701 of 2004 in W.P.No.3571 of 2004, dated 18.03.2004, wherein, this Court had directed the second respondent to consider the case of the petitioner for retirement as Drawing Teacher as per Rules, by-laws and regulations. When the said contempt case has been heard, both the counsel agreed for disposal of the main writ petitions itself. In view of the rejection of the petitioner's claim in the writ petitions, the interim order loses all its force. Therefore, there cannot be any non-compliance or contempt on the part of the respondents. In view of the same, I do not find any contempt or violation of the order and accordingly, the Contempt Case is dismissed.

In W.P.No.3573 of 2004, the petitioner, *inter alia,* seeks for *mandamus* in not taking an appropriate action in fixing the proper pension for the grant of 16 years scale with effect from 19.06.1994. It is needless to mention that as indicated above, the petitioner has accepted the pension, as fixed by the respondents and if there is any error or whatsoever in regard to the calculation, it is always open for the petitioner to file an appropriate application before the respondents herein. On receipt of such application, the respondents shall consider and dispose of the same, in accordance with law, after giving notice and opportunity to the petitioner.

Under the above circumstances, I do not find any merit in these three cases viz., W.P.Nos. 3571, 3573 of 2004 and CC No. 826 of 2004, and the same are accordingly dismissed. No costs.

B.Prakash Rao, J

Date: 03.02.2005

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To

1 The District Educational Officer, Nampally Zone, Hyderabad.
2 The Correspondent, Nish Shulk Prabhat High School, Khairatabad, Hyderabad.

3 Two CCs to G.P for School Education, High Court of A.P. Buildings, Hyderabad (OUT)

4 Two CD Copies